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Michael J. Thompson

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Ex Parte notice*** **- RM No. 10568**, Request to Update Default Compensation Rate for Dial-Around Calls from Payphones

Dear Ms. Dortch:

On March 31, 2004, Martin W. Garrick, vice president of the San Diego Payphone Owners Association ("SDPOA"), and Michael J. Thompson of Wright & Talisman, P.C., counsel for SDPOA, met at the offices of the Federal Communications Commission ("Commission") with Martha R. Johnston, Director of the Commission's Office of Legislative Affairs, Paul J. Nagle, Attorney-Advisor in the Office of Legislative Affairs, and Jeffrey Carlisle, Senior Deputy Bureau Chief of the Common Carrier Bureau. Joby Fortson, Legislative Counsel to Congressman Joe Barton, also attended. The purpose of the meeting was to discuss the need for prompt Commission action on the Notice of Proposed Rulemaking in the captioned proceeding and related issues affecting the payphone industry.

Mr. Garrick began the discussion by describing SDPOA and his background in the payphone industry. Mr. Garrick noted that the default rate for per-call compensation for dialaround calls has been \$.24 for several years, while PSPs' costs have escalated and call volumes have steadily declined. Mr. Garrick observed that cost studies submitted to the Commission in this proceeding support a compensation rate between approximately \$.48 and \$.53 per call. He explained that, while the number of payphones deployed and call volume has declined due to cell phone use, there is still a public need for a viable payphone industry, since approximately 50% of Americans do not own cell phones. Mr. Garrick provided the Commission's representatives with several handouts outlining his points. Copies of those materials are attached to this notice. Mr. Garrick urged the Commission's representatives to assist in obtaining prompt action by the Commission on the proposed rulemaking to revise the per-call compensation rate.

Further discussion, primarily among Messrs. Garrick, Thompson and Carlisle, related to potential alternatives for addressing the several-month time lag in carriers' payment of dialaround compensation, better balancing the negotiating positions of payphone service providers and IXCs/SBRs to reduce the incidence of non-payment of dialaround compensation; and in the light of limitations on private enforcement of the dialaround compensation regulations in the Ninth Circuit following *Greene v. Sprint Communications Co.*, 340 F.3d 1047 (9th Cir. 2003), initiating action by the Commission (other than in response to individual PSPs' complaints) to investigate and remedy non-payment of dialaround compensation.

Very truly yours,

Michael J. Thompson

Enclosures (4)

DIAL AROUND DISCUSSION POINTS:

Urgently needed is an increase in the dial around compensation rate from $.24 (.238) per call to $.48 per call.

- The $.24 rate has existed since 1997 yet operating expenses such as equipment, worker's compensation, gasoline, labor and maintenance costs have all increased.
- The local LEC 's and the great majority of payphone providers all charge $.50 for a local call.
- Local calls average 2 1/2 -3 minutes whereas 1-800 calls are longer and average 3 1/2-4 1/2 minutes per call. Opportunity to service a coin caller is lost along with added revenue when a 1-800 caller remains on the phone for this length of time at the $.24 rate.
- Reports are AT&T and MCI are now charging $.40-$.45 per 1-800 call to their own 800 business subscribers.
- Bell Companies and Verizon studies conducted, using the Court approved FCC formula to determine dial around rates, show that rates should be increased to $.48 or $.49.
- The increase in 1-800 calls over coin calls leaves little cash flow for payphone service providers to cover operating expenses. Additionally, 1-800 calls are paid to the provider on a quarterly basis-up to 180 days after the first call of that quarter is made.
- The quarterly dial around payment delay allows defunct or bankrupt companies to forego payments altogether (e.g. MCIWorldcom).
- Stronger enforcement measures and heavy fines are needed for those not paying dial around to providers as outlined in Tollgate. While the larger carriers are compensating for dial around calls, the smaller or sub carrier "houses" are not.

Cellular Competition On An Unleveled Playing Field Results in Cellular Advantages

- The portable, multi-feature cellular phones capitalize on consumer convenience.
- Heavy advertising, complete with celebrity endorsements, hype the technology and variety of cell phones.
- Some companies even give away cell phones while home, business and payphone line customers pay $50.00-$110.00 to have a phone line installed.
- Because the cell phone owner pays a monthly fee for service, the wireless companies have a regular, dependable stream of revenue.
- The cellular consumer must pay the usage bill within 15-20 days thereby providing the wireless companies timely cash flow.
- The phone companies can collect revenue three to four times on a single call when a cell phone is involved. Billing occurs on outgoing land-line dial tone, incoming calls to cell customer, roaming charges and long distance calls/air time. In short, 4 bites from the same apple!
- The phone companies can collect on 1-800 calls by charging the consumer on a per minute basis for air time. In other words, these 1-800 calls are not "free" to the cellular user.
- There exists evidence of corporate duplicity in that the wireless companies are offering both the cell phone product and air time plans. The increase in area codes to accommodate the increase in cell phone numbers impacts the payphone service provider who must continually purchase programs to update the payphones to be able to call these new numbers.

Multi-Million Dollar Advertising Campaign Promoting 1-800 Calls

1 (800) CALL ATT (RATES)

AT&T	Credit Card Call Automated	Collect Call Automated	3rd Party Billing Operator Assisted
Connection Fee	$3.24	$4.98	$7.98
3-Minute Call @. $.99	$2.97	$2.97	$2.97
9.1% Fed Univ Tax	$0.57	$0.72	$1.00
TOTAL	**$6.78**	**$8.67**	**$11.95**

1 (800) COLLECT (RATES)

MCI	Credit Card Call Operator Assisted	Collect Call Automated	3rd Party Billing Operator Assisted
Connection Fee	$5.99	$4.99	$5.95
3-Minute Call @ $.99	$2.97	$2.97	$2.97
Payphone Use Fee	$0.26	$0.26	$0.26
9.1% Fed Univ Tax	$0.84	$0.75	$0.84
TOTAL	**$10.06**	**$8.97**	**$10.02**

NOTE: These rates apply to a call placed from a payphone in San Diego to our Congressman in Washington D.C. The payphone service provider would receive $.24 for the calls described above whereas companies such at AT&T and MCI receive the amounts listed above.

United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

WASHINGTON, DC 20510-6125

May 15, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

We are writing to request that the Commission expedite consideration of the "dial around" rate petitions filed by independent and regional bell-operating-company payphone service providers.

Section 276 of the Telecommunications Act of 1996 established the twin goals of promoting competition among payphone service providers and promoting the widespread deployment of payphone services. Since adoption of the 1996 Act, the average rate for coin calls has increased from 35 cents to 50 cents, while the "dial around" rate charged for credit card, "800" and other non-coin calls has fallen to 24 cents. The number of payphones has declined from a high of 2.2 million in 1998 to about 1.8 million today, with a decline in the last few years of about 140,000 a year. While this decline is attributable in part to increased use of cellular phones, it is also the result of restrictions on the amount that can be charged for "dial around" service. Today payphones with usage as high as 250, 300 or even 350 calls per month are removed from service as unprofitable.

Payphones remain an important lifeline service. Fifty-five percent of Americans do not own wireless phones. And of course, wireless phones are forgotten, their batteries go dead, and they are too often useless in areas with poor reception. It is not in the public interest for payphones with high usage to be forced out of service because of inadequate cost recovery. This is especially true because the rates charged by the companies issuing calling cards, and providing "toll free" service, is deregulated; there is no reason to believe that cost savings produced by the dial around formula are passed on to consumers.

We strongly urge the Commission to assure that prompt action is taken on the pending "dial around" petitions.

Sincerely,

Ernest F. Hollings

Conrad Burns